

**CALIFORNIA BOARD OF ACCOUNTANCY**

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DEPARTMENT OF CONSUMER AFFAIRS
 CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

**MINUTES OF THE
 March 16-17, 2006
 BOARD MEETING**

Hilton Pasadena
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 Pasadena, CA 91101
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I. Call to Order.

President Ronald Blanc called the meeting to order at 10:02 a.m. on Thursday, March 16, 2006, at the Hilton Pasadena and the meeting adjourned at 2:55 p.m. President Blanc again called the meeting to order at 9:07 a.m. on Friday, March 17, 2006, and the meeting adjourned at 11:53 p.m.

Board Members**March 16, 2006**

Ronald Blanc, President	10:02 a.m. to 2:55 p.m.
David Swartz, Vice President	10:02 a.m. to 2:55 p.m.
Ruben Davila, Secretary-Treasurer	Absent
Richard Charney	10:02 a.m. to 2:55 p.m.
Angela Chi	10:02 a.m. to 2:55 p.m.
Donald Driftnier	10:02 a.m. to 2:55 p.m.
Sally Flowers	10:31 a.m. to 2:55 p.m.
Sara Heintz	10:58 a.m. to 2:55 p.m.
Gail Hillebrand	10:02 a.m. to 2:55 p.m.
Thomas Iino	10:02 a.m. to 2:55 p.m.
Clifton Johnson	10:02 a.m. to 2:55 p.m.
Bill MacAloney	Absent
Robert Petersen	10:02 a.m. to 2:55 p.m.
Renata M. Sos	10:02 a.m. to 2:55 p.m.
Stuart Waldman	10:02 a.m. to 2:55 p.m.

Board Members

March 17, 2006

Ronald Blanc, President	9:07 a.m. to 11:53 p.m.
David Swartz, Vice President	9:07 a.m. to 11:53 p.m.
Ruben Davila, Secretary-Treasurer	Absent
Richard Charney	9:10 a.m. to 11:53 p.m.
Angela Chi	9:07 a.m. to 11:53 p.m.
Donald Driftmier	9:07 a.m. to 11:53 p.m.
Sally Flowers	9:07 a.m. to 11:53 p.m.
Sara Heintz	9:45 a.m. to 11:53 p.m.
Gail Hillebrand	9:07 a.m. to 11:53 p.m.
Thomas Iino	9:07 a.m. to 11:53 p.m.
Clifton Johnson	9:07 a.m. to 11:53 p.m.
Bill MacAloney	Absent
Robert Petersen	9:07 a.m. to 11:53 p.m.
Renata M. Sos	9:07 a.m. to 10:55 p.m.
Stuart Waldman	9:07 a.m. to 11:53 p.m.

Staff and Legal Counsel

Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General, Board Liaison
Greg Newington, Enforcement Division Chief
George Ritter, Legal Counsel
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Aronna Wong, Regulation/Legislation Analyst

Committee Chairs and Members

Roger Bulosan, Chair, Qualifications Committee
Harish Khanna, Chair, Administrative Committee

Other Participants

Sheri Bango, American Institute of Certified Public Accountants (AICPA)
Don Chang, Department of Consumer Affairs (DCA)
Tom Chenoweth
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Mike Duffey, Ernst & Young LLP
Kenneth Hansen, KPMG LLP
David Link, Senator Figueroa's Staff
Barry Nagoshiner, CPA (March 17, 2006)
Richard Robinson, Big 4 Accounting Firms
Benito O. Rodriguez, (March 17, 2006)

Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Carl H. Sinclair (March 17, 2006)
Antonette Sorrick, Department of Consumer Affairs (DCA)
Marc Staenberg, (March 17, 2006)
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)
Rob Troncoso, Center for Public Interest Law (CPIL)
Charlene Zettel, Department of Consumer Affairs (DCA)

II. Board Minutes.

A. Draft Board Minutes of the January 19-20, 2006, Board Meeting.

The draft Board minutes of the January 19-20, 2006, Board meeting were adopted on the Consent Agenda. (See Agenda Item XIII.B.)

B. Draft Board Minutes of the February 23, 2006, Board Meeting.

The draft Board minutes of the February 23, 2006, Board meeting were adopted on the Consent Agenda. (See Agenda Item XIII.B.)

III. Report of the President.

Mr. Blanc introduced two new Board members. He noted that Ms. Angela Chi was appointed by Governor Schwarzenegger on March 9, 2006, and she was replacing Ms. Martinez. He noted that Ms. Chi has been an accountant with Watts, Campbell, Chi & Baker, a firm in Fresno, since 1986 and is currently the Vice President. She is in charge of audits of non-profit organizations, tax, accounting and planning work. Mr. Blanc indicated that she earned her Master of Business Administration degree in Finance from the California State University, Fresno and her Bachelor of Law degree from the National Taiwan University. Ms. Chi is very active in many professional and civic activities.

Mr. Blanc also introduced Mr. Robert Petersen who filled the vacant position previously occupied by Mr. Drott. He was also appointed by Governor Schwarzenegger. He joined Petrinovich Pugh & Company LLP which is based in San Jose, as a partner in 2001 with the merger of his firm, Petersen Associates that he began in 1982. He serves clients dealing with state and local tax issues. Mr. Blanc indicated that Mr. Petersen has a B.B.A. degree in Accounting and Business Statistics from the University of Oregon and is also active in many professional and civic activities.

Mr. Blanc welcomed both new members on behalf of the Board and indicated that he looked forward to their active participation.

On March 16, 2006, Mr. Blanc introduced Ms. Antonette Sorrick, Deputy Director of Board Relations, and Mr. Don Chang, Supervising Legal Counsel, from the Department of Consumer Affairs and he welcomed them to the meeting.

On March 17, 2006, Mr. Blanc introduced and welcomed Ms. Charlene Zettel, Director of the Department of Consumer Affairs, and thanked her for coming to the meeting.

Ms. Zettel indicated that it was a pleasure for her to be at the meeting and she thanked the entire Board for its service. She noted that she was always impressed by the complexity of issues that the Board tackled. She indicated that she believed it was one of the Department's premier boards. Ms. Zettel noted that one of the most important clients that the Board served is the consumers of California. She indicated that one of DCA's foremost goals is customer service as directed by the Governor's Office. Ms. Zettel indicated that the Board's Executive Officer, Ms. Sigmann, was one of the best and her dedicated staff exhibited excellent customer service. She thanked the Board for having her and congratulated them for their hard work and dedication that they give to their appointed positions.

A. Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting Related to Practice Privilege.

Mr. Blanc reported that he was going to turn the meeting over to Ms. Sos to present to the Board the various proposed statutory changes to address the concerns identified during implementation of the Practice Privilege Program.

Ms. Sos reported that after extensive testimony from all of the stakeholders, deliberation and consideration of all of the issues at the Board's February meeting, the Board approved a four-part statutory change to address on a temporary basis the unintended consequences from the implementation of the Board's Practice Privilege Program.

After that meeting, Mr. Blanc designated Ms. Hillebrand and Ms. Sos to work with staff to study any technical drafting related to the proposed statutory changes to ensure that the language was consistent with other provisions in the Accountancy Act.

Ms. Sos reported that she and Ms. Hillebrand met with staff and interested parties the previous week to address possible technical changes but not to revisit or reconsider the policy decisions that underpinned the proposed statutes. She noted that it was not a public meeting. Ms. Sos reported that Assembly Member Bermudez' bill,

AB 1868, would incorporate the Board's proposed statutes in their entirety and a copy of the latest version had been provided at this meeting. **(See Attachment 1.)**

Ms. Sos indicated that in the agenda packet was a memo from Ms. Wong dated March 8, 2006. Attachment 1 of that document provided the language adopted by the Board at its February 23, 2006, meeting and the proposed technical revisions to that language were indicated by bold print. **(See Attachment 2.)** Ms. Sos reported that the cover memo identified the changes being recommended and explained why they were necessary.

Ms. Sos reported that the change to Section 5050 restored a limited version of temporary and incidental practice in California on a temporary basis. One of the issues that arose after the February Board meeting was whether the provision as written would prohibit firms that were registered in California from soliciting clients in California. Ms. Sos noted that the proposed changes in Section 5050(b) clarified that California registered firms were not prohibited by this section from soliciting California clients.

It was moved by Ms. Hillebrand, seconded by Mr. Swartz, and carried to adopt the proposed changes to Section 5050. Ms. Flowers and Ms. Heintz were temporarily absent.

Ms. Sos then described Sections 5050.1 and 5050.2 as key building blocks to ensure that the Board has full disciplinary jurisdiction and authority over any firm or individual that practices public accountancy in California. She noted that these sections were being proposed to be implemented on a permanent basis. Ms. Sos indicated that language in Section 5050.1 was added to make it declarative of existing law.

It was moved by Mr. Driftmier, seconded by Ms. Hillebrand, and carried to adopt the changes to Section 5050.1. Ms. Flowers and Ms. Heintz were temporarily absent.

Ms. Sos reported that Section 5050.2 was intended to make clear that any practice that occurs pursuant to the proposed statutory revisions would be subject to the Board's disciplinary authority, including but not limited to, the ability of the Board to impose fines. She indicated that subdivision (b) clarified that this Board's administrative suspension provision which is part of the practice privilege provisions would also extend to firms.

Ms. D'Angelo Fellmeth welcomed Ms. Chi and Mr. Petersen. She indicated that the Board had added the authority to issue a fine pursuant to Article 6.5 and that Article limits the Board to fining licensees or applicants for licensure. Ms. D'Angelo Fellmeth noted that this created confusion and she did not believe that the language was sufficient.

Mr. Granen agreed that there was a need for clarification of the language if there was doubt regarding the fine provision. He noted that he would work on the language after the meeting and present his suggested changes to the Board tomorrow, March 17, 2006.

It was moved by Mr. Iino, seconded by Dr. Charney, and carried to adopt the proposed changes to Section 5050.2 with the understanding that technical revisions related to the fining authority would be presented later in the meeting. Ms. Flowers and Ms. Heintz were temporarily absent.

Ms. Sos reported that Section 5050.3 was a proposed new section that related to a provision in current Section 5054, which gave the Board the authority, by regulation, to limit the number of tax returns that could be prepared under the exemption. Ms. Sos indicated that after discussion by the working group, it was decided that it would be beneficial for the Board to have express statutory authority to implement, interpret or make specific provisions of the Board's proposed statute by regulation. She noted that as statutes are implemented, there can be unintended consequences, and the Board should have the ability to fine-tune the statute by regulation.

Ms. Sos indicated that Mr. Ritter had some concerns regarding whether this provision would give the Board the ability to limit the scope of exempted tax services in Section 5054. Mr. Ritter indicated that Section 5050.3 is restating what is already in the law, that the Board has the authority to adopt regulations to implement the Accountancy Act. He noted that existing Section 5054 explicitly permits the Board to limit the number of tax returns by regulation. He believed that the proposed Section 5054 should have an equivalent provision with that type of specificity to match the current amendments. Otherwise, one could argue that the Board does not have the authority to restrict what is already provided for in the statute. Mr. Ritter reported that the Board could instead adopt the following language change to Section 5054. "The Board may, by regulation, limit the nature and quantity of tax services provided under this section."

It was moved by Ms. Sos, seconded by Mr. Swartz, and carried to not adopt Section 5050.3. The motion included adding a subdivision in Section 5054 that would state: "The Board may, by

regulation, limit the nature or quantity of tax services that may be provided pursuant to subdivision (a).” Ms. Heintz was temporarily absent and Ms. Hillebrand abstained.

Ms. Sos reported that Section 5054(a) was split into two subsections to clarify what the obligations were with respect to individuals, firms, and non-registered firms.

Ms. D’Angelo Fellmeth inquired as to whether the Board was amenable to revisiting the issue of expanding Section 5054 to exempt all tax services. Mr. Blanc indicated that the Board would consider her request after it had acted on all of the proposed changes.

It was moved by Mr. Johnson, seconded by Mr. Swartz, and carried to approve the changes to Section 5054. Ms. Heintz was temporarily absent and Ms. Hillebrand was opposed.

Ms. Sos reported that the principal change to Section 5096.12 was to ensure that the provision was self-executing. If a firm was engaging in the practice of public accountancy through a practice privilege holder, it was consenting to the jurisdiction of the Board.

It was moved by Ms. Sos, seconded by Mr. Iino, and carried to approve the changes to Section 5096.12. Ms. Heintz was temporarily absent.

Ms. Sos then listed the outstanding issues that were identified during and after the working group meeting.

The first issue related to Section 5096.12. This section currently applies to attest and non-attest services and the question was raised whether it should be limited to non-attest services. Ms. Sos indicated that this was a policy decision to be addressed by the entire Board.

The second issue was the ability of staff to identify with precision and accuracy which firms are practicing through a practice privilege holder. Ms. Sos noted that the Board currently requires firm names to be provided on the notification form. However, the names are not being provided in a precise way and there is no unique identifier to distinguish between firms with similar names. The issue is whether the Board needs statutory authority to require an identifier for the firm being reported on the notification form. A suggestion was made to use the Federal Tax Payer ID number.

The third issue related to the definition of firm in the context of Section 5096.12. Ms. Sos reported that legal counsel had concerns that there

are inconsistencies or ambiguities in the statutory provisions where that term is used.

The final issue related to the tax services provision.

Ms. Sos reported that at the Board's February meeting, Section 5096.12 was discussed mostly in the context of tax services. It was possible that some Board members were under the impression that the exemption in 5096.12 was limited to non-attest services, however, that is not how the statute is drafted. Ms. Hillebrand indicated that she believed that since there was no volume restriction on practice privilege, it is important that firms doing attest work be registered in California.

Mr. Newington reported that there are features in Section 5096.12 that disfavor California CPAs. If you are a CPA working in California, your firm would have to be registered in California and would have to comply with all California firm requirements. He indicated that the disparity is that practice privilege holders would have a lesser challenge than individual California licensees with regard to their ability to practice in California through a firm that is not registered in California.

Mr. Newington additionally noted that firms practicing through a practice privilege holder could do so as a Limited Liability Company (LLC), while California licensed firms cannot. He indicated that California licensed firms have extensive requirements including reportable events and non-licensee ownership.

Mr. Shultz indicated that he was concerned about barriers that other states may decide to duplicate. He noted that there was no question that the regulation of attest services should be robust. He indicated that the problem is that attest defines the entire engagement which is made up of many tiny steps that lead to a conclusion. He indicated that he believed that restricting Section 5096.12 to non-attest services would be regulatory overkill.

Ms. Tindel encouraged the Board to hold to the concept of the UAA, which was ease of mobility and increased consumer protection. California should not be in a position where it is prohibiting consumer choice with regard to the selection of an auditor. Mr. Blanc indicated that the Board had decided to apply the practice privilege concept without making a limitation on attest services. He encouraged the Board to stay with its previous decision. Mr. Swartz indicated that he was comfortable with the concept of substantial equivalency and that firms are licensed and regulated in their home states.

Ms. Hillebrand reported that the Board had studied practice privilege as it applied to individuals for two years and had only studied the firm

exception concept for two days. She believed that was not enough time to complete a full evaluation of what it means for a firm not to have to register in California and practice through a practice privilege holder.

Ms. Sos reported that when the Practice Privilege Task Force began, one of the motivations was the GAO report that stated that the inability of qualified CPAs to move seamlessly across state lines was having an adverse effect on small firms' ability to compete with the big firms for business, particularly in the area of audits. She believed that it was imprudent for the Board to put hurdles up that will affect the small firms. She further indicated that she believed that the other disciplinary and jurisdictional provisions would protect California's consumers.

Mr. Link of Senator Figueroa's staff indicated that the rule in the policy area has been that attest services require licensure. He added that it was important to address mandatory auditor rotation as required by the Sarbanes-Oxley Act through practice privilege; however, to no longer require California licensure for attest services is a large policy change and something that should be decided with more than a couple of days of discussion.

It was moved by Ms. Hillebrand to amend the proposed language in Section 5096.12 below to add "This section does not apply to attest services" and to cross-reference the definition of attest services in the peer review statute. There was no second on the motion.

It was then moved by Mr. Swartz, seconded by Mr. Johnson, and carried to adopt the proposed language to Section 5096.12 as stated below. Ms. Hillebrand was opposed.

Section 5096.12 – (a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Ms. Sos reported that staff is recommending requiring a federal taxpayer identification number for firms and the firm's address and telephone number on the practice privilege notification form to more clearly identify firms. The proposed language is provided below. It was noted that the notification forms are not public record.

"Section 5096.13 – The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its Federal Tax Payer Identification Number."

It was moved by Ms. Sos, seconded by Mr. Petersen, and unanimously carried to adopt the proposed statutory language in Section 5096.13.

Mr. Ritter reported that the term "firm" is defined in Section 5035.1 as a sole proprietorship, corporation, or partnership. Section 5035 defines "person" as a number of entities including LLCs. Mr. Ritter indicated that under California law, LLCs cannot practice accountancy in California. The new statutory amendments refer to a firm that is lawfully practicing in another state. He indicated that the term "firm" is ambiguous as to whether it would include LLCs if they were authorized to practice accountancy in another state. The language in amended Sections 5050(b) states that "nothing in this chapter shall prohibit a firm from lawfully practicing in another state" and that increases the ambiguity. Mr. Ritter noted that this was a policy discussion for the Board to address.

Mr. Robinson indicated that one of the driving forces behind practice privilege was the UAA and seamless practice across state lines. He noted that lawfully practicing in another state means being lawfully regulated and every state has a different legal scheme.

Mr. Ritter indicated that the policy issue was one thing but the ambiguity and interpretation of the term "firm" needed to be addressed and the Board may choose to adopt some clarifying language. Mr. Blanc suggested that the Board adopt the policy change and legal counsel could work on proposed language for the next day's meeting.

It was moved by Ms. Sos, seconded by Mr. Swartz, and carried that the Board would not prohibit out-of-state LLCs from practicing in

California through a practice privilege holder. Legal counsel was directed to work on clarifying language to implement that policy if needed. Ms. Hillebrand was opposed.

Ms. D'Angelo Fellmeth thanked Mr. Blanc and the Board members for their patience and courtesy. Ms. D'Angelo Fellmeth submitted a letter on the tax services issue (**see Attachment 3**) indicating that CPIL opposed the profession's proposal and this Board's decision to include the amendment to Section 5054 which would significantly expand the exemption to the Board's licensure, practice privilege, and firm registration requirements for the provision of tax services by out-of-state CPAs in California. Ms. D'Angelo Fellmeth identified her reasons for her opposition. She noted that the proposal effectively supports deregulation on the state level of a huge area of CPA practice that is undeniably the practice of public accountancy in California. She noted that although the proposal is being included in a package of urgency legislation that was allegedly needed to address the problems that were inadvertently created by the practice privilege program, this component of that package is not necessary to address those problems. She indicated that she believed that the Board needed time to carefully analyze this proposal and to gauge its effect. Ms. D'Angelo Fellmeth reported that this proposal was first reviewed on February 23, 2006, and neither staff nor the Attorney General's Office has had an opportunity to examine and study all of the ramifications of this amendment. She indicated that it was not necessary to resolve the practice privilege problems and also was not appropriate for inclusion in urgency legislation.

Ms. D'Angelo Fellmeth indicated that the concept of tax services is extremely broad. The Public Company Accounting Oversight Board (PCAOB) defined tax services as all professional services rendered for tax compliance, tax advice, and tax planning. She noted that the Board is moving from exempting the narrowest slice of the practice of public accountancy from its licensure, firm and practice privilege requirements to exempting this huge area of tax services.

Ms. D'Angelo Fellmeth reported that the definition of permissible "tax services" is very controversial and still evolving. The PCAOB and the Securities and Exchange Commission (SEC) are engaged in an ongoing rulemaking proceeding to define the types of tax services that auditors may provide to their audit clients without impairing the independence of the auditors. As a result, there really is no clear understanding of what permissible tax services are for auditors of public companies. She indicated that she believed that the Board and the Legislature would be authorizing something in California without knowing the full ramifications or the definition of it. Ms. D'Angelo Fellmeth indicated that she did not

believe that is responsible or consistent with the Board's duty to protect the public.

Ms. D'Angelo Fellmeth reported that tax consulting does not appear to be well regulated by other agencies. The Internal Revenue Service (IRS) and the Franchise Tax Board (FTB) have phone books full of standards that tax practitioners have to follow, and they may occasionally bar a practitioner from practicing in front of them. However, neither one of those agencies has the ability to revoke, restrict, or suspend a CPA's license in order to protect the public. She indicated that was the Board's responsibility and it is casting doubt on its ability to do that by supporting this huge exemption to its licensing requirements.

Ms. D'Angelo Fellmeth reported that she had been attending meetings for over 15 years and for many of those years she has heard from the profession its great desire to be consistent with the UAA. The AICPA and NASBA have worked for years to craft this model legislation and rules. Ms. D'Angelo Fellmeth noted that this proposal is not at all consistent with the UAA. Section 23 of the UAA allows cross-border practice by licensees from substantially equivalent states if they notify the Board. She indicated that the profession's proposal is inconsistent with the UAA which contains no exemption for that service. Any CPA licensed by any state can practice tax services in California; there is no requirement that the CPA be licensed by a substantially equivalent state; and finally, there is no notice to the Board required prior to the provision of tax services in California.

Ms. D'Angelo Fellmeth indicated that she did not fully understand all of the ramifications of this expansion of Section 5054 to cover tax services, and she was concerned that the Board also does not fully understand all of the ramifications. The Board and staff have not had time to analyze them and the Board should not be forced to accept it in the context of urgency legislation.

Ms. D'Angelo Fellmeth noted that the idea behind practice privilege was that if an out-of-state CPA wanted to engage in cross-border practice, he or she would notify the Board and get a practice privilege. She believed that there was no reason to support the exemption of tax services, even on a temporary basis. She communicated that the Board's job is to protect the public, not to accommodate the profession. Section 5000.1 guides the Board's decision making and makes public protection the Board's paramount priority above all other interests.

Ms. D'Angelo Fellmeth reported that she has studied occupational licensing for over 25 years and the licensing process is supposed to define and protect a scope of practice and limit that scope of practice to

people who have proven themselves to be competent to engage in it. She urged the Board to reconsider its decision regarding this amendment. She thanked the Board for accommodating her and indicated she appreciated its attention. Mr. Blanc thanked Ms. D'Angelo Fellmeth for her thorough letter and compelling argument.

Ms. Flowers questioned whether this was an enforcement issue prior to practice privilege. Mr. Newington reported that before 2006, there were a minor number of complaints, if any, that dealt with tax returns prepared by out-of-state CPAs for California clients. The Board's perspective had always been that it was considered to be temporary and incidental activity exempted under the law. With the deliberations that have taken place over the last several weeks, comments have been made by the profession that indicate that some of the engagements have been more than temporary and incidental, they have been ongoing relationships of a substantive nature. The self-admission of non-compliance with the old law was not known to the Board until these revelations were made.

Mr. Driftmier indicated that he appreciated Ms. D'Angelo Fellmeth's letter. He noted that the Board crafted this legislation to not exempt anyone from discipline. There are limitations that protect the consumers of California. Mr. Driftmier reported that his firm had discontinued preparing tax returns with audit clients because of the rule that the PCAOB currently has in effect. Ms. Sos added that under temporary and incidental practice, out-of-state CPAs could physically enter California, solicit clients in California, and do whatever without notice to this Board. Under the tax services exception, the individual does not enter California, does not solicit California clients, and does not assert or imply that he or she is licensed in California. Ms. Sos indicated that the language was very carefully constructed to add those consumer protection elements.

Mr. Schultz addressed the argument that the tax services concept is inconsistent with the UAA. He indicated that he is a member of the joint AICPA/NASBA UAA Committee that drafts the UAA which is then subject to approval by the boards of those two organizations.

Mr. Schultz indicated that the language in the UAA has the notification requirement being triggered by entering the state. The provision being discussed deals with people who do not enter the state. Mr. Granen, who is also a member of the UAA Committee, indicated that technology has provided ways to allow CPAs to enter the state without physically going to that state. This has created a great deal of ambiguity and so the NASBA Committee is drafting model rules in an effort to study if there can be a clearer definition of what it means to enter a state.

Ms. Hillebrand indicated that under current law, the Board has practice privilege as an opportunity for out-of-state CPAs to come and serve California clients. Firm registration had been addressed in the revisions to Section 5096.12, and the recommendation to the Legislature for the reinstatement of temporary and incidental practice was an additional way for some tax services to be provided. Ms. Hillebrand indicated that she believed that it was not appropriate for this Board to make this decision on an urgent basis and she favored reconsideration.

Mr. Link clarified for the Board what the consequences would be legislatively if the Board moved forward with the tax services concept. He noted that Senator Figueroa was asked to carry the Board's legislation because of an urgent problem that needed to be solved and she was happy to do that. However, he indicated that this is an item that she considers so significant and so non-urgent that she will not carry it in her bill. Therefore, if tax services are included in a bill, Senator Figueroa will not be the author. Mr. Link communicated that Senator Figueroa is extremely interested in this Board and in solving the problem it has with practice privilege. She does not have a problem with the tax services issue being pursued in a separate bill, but in her estimation, it is significant enough that she would not go forward with SB 503 if the Board includes tax services in its proposal.

Mr. Blanc mentioned that one of the driving forces for the February meeting was that the IRS had issued Circular 230 which is an elaborate and systematic publication that sets forth rules of practice in the field of income taxation. There are sanctions and penalties for tax practice misconduct. Mr. Blanc indicated that he was satisfied that the IRS will engage in robust enforcement of tax misconduct including the suspension or cancellation of practice rights before the IRS which would bring it within the disciplinary authority of this state and allow the Board to take action. Mr. Blanc added that there is authority proposed in the bill to discipline someone who is engaged in misconduct in tax services even if that person is out-of-state. He indicated that it is clear that this is an urgent matter to enable out-of-state practitioners to continue their practice seamlessly for their clients in the midst of tax season.

Ms. D'Angelo Fellmeth indicated that the IRS has no authority to revoke a license; it can only bar a licensee from practicing before it. If it does that to a California CPA, it has to be reported to the Board. She noted that in FY 2003/04, the Board received two notices from the IRS and the FTB combined, in FY 2004/05 it received three notices. She indicated that she believed that was not vigorous enforcement. She noted that the Board cannot discipline what it is not aware of and that was the purpose of the Practice Privilege Program. She indicated that she supported tax

services under a practice privilege. Mr. Blanc added that the past statistics may not be relevant since Circular 230 was just adopted last year.

Mr. Robinson concurred that since Circular 230 was just adopted last year and made more restrictive at the end of last year, that has yet to be reflected in the Board's statistics. Secondly, Ms. Tindel asked him to convey to the Board that every time the IRS bars a licensee from practicing before it, the Board also revokes the license. He pointed out that it is a matter of consumer choice when a California consumer uses an out-of-state CPA to prepare a return. He added that Enrolled Agents prepare the vast majority of tax returns, and they are not regulated by this Board, but by the IRS and the FTB.

It was moved by Ms. Hillebrand, and seconded by Ms. Heintz, to reconsider the proposed revisions to Section 5054. Mr. Blanc, Mr. Swartz, Dr. Charney, Ms. Chi, Mr. Driftmier, Ms. Flowers, Mr. Iino, Mr. Johnson, Mr. Petersen, Ms. Sos and Mr. Waldman were opposed. The motion failed.

Ms. Sos reported that a new document had been provided that addressed three issues that were identified in the meeting the previous day, March 16, 2006. The first issue was the definition of licensee for the purposes of the fining authority in Article 6.5. Mr. Ritter reported that Section 5116.6 defines "licensee" for the purposes of Article 6.5 broadly enough to include all forms of authorized practice and consequently no change to Section 5116.6 was recommended. The Board concurred with the recommendation.

Ms. Sos indicated that Mr. Ritter had identified a potential ambiguity that may cause confusion in the Board's proposed statute regarding the meaning of the term "firm." The Board previously voted as a policy not to exclude out-of-state firms that were LLCs from practicing in California through a practice privilege holder. The following language was proposed.

"Section 5035.3 – For purposes of subdivision (b) of Sections 5050, 5054, and 5096.12, firm includes any entity which is authorized or permitted to practice public accountancy as a firm under the laws of another state."

It was moved by Mr. Driftmier, seconded by Dr. Charney, and carried to approve the revised language to Section 5035.3. Ms. Heintz was temporarily absent.

Ms. Sos reported that the Board discussed the need to have a specific authorization in Section 5054 to authorize the Board, by regulation, to limit the nature and quantity of tax services that are permitted pursuant to subdivision (a) of Section 5054. The following language was proposed.

"Section 5054(b) – The board may, by regulation, limit the nature and quantity of tax services provided pursuant to subdivision (a) of Section 5054."

It was moved by Mr. Swartz, seconded by Mr. Johnson, and carried to adopt the changes to Section 5054(b). Ms. Hillebrand was opposed and Ms. Heintz was temporarily absent.

Mr. Blanc thanked both Ms. Sos and Ms. Hillebrand for their tireless efforts to address these difficult implementation issues and achieve resolution. Mr. Blanc requested that Ms. Hillebrand, as Chair of the CPC, add a discussion of the parameters of tax services to the Committee's May agenda. He noted that the Board has had a spirited discussion over the last two months on the concept of tax services, and from the presentation yesterday, it is clear that it was an evolving concept. He indicated that he believed that it was the Board's obligation to study to what degree tax services should be subject to any exemptions, and if so, how the Board would define it.

Ms. Hillebrand indicated that she believed that it would be helpful if members of the public and the profession would forward the existing definitions of tax services, the definitions that are under consideration by other bodies, and information about the nature of the regulation offered by those bodies for consideration by the CPC, in addition to the background provided by staff. It would also be helpful to have information presented regarding whether other entities engage in any competency screening as opposed to complaint based activity.

Mr. Blanc directed Ms. Sigmann to issue a communication to interested parties and other regulatory entities to respond to the questions posed.

IV. Report of the Vice-President.

No report.

V. Report of the Secretary-Treasurer.

A. FY 2005/06 Mid-Year Financial Report.

moved by Mr. Waldman, seconded by Mr. Johnson, and carried to adopt an “oppose” position on AB 1612. Ms. Hillebrand was opposed and Ms. Sos was temporarily absent.

f. AB 1868 (Bermudez) – Accountancy: Licensure.

Mr. Waldman reported that AB 1868 is sponsored by CalCPA. It was discussed by the CPC and the Board at the February 22-23, 2006, meetings. At the February 2006 meeting, the Board adopted an “oppose unless amended” position on this bill. It is anticipated that AB 1868 will be heard by the Assembly Business and Professions Committee on April 4, 2006.

Mr. Waldman reported that AB 1868 was amended on March 15, 2006, to contain the language approved by the Board at its February 23, 2006, meeting and the language for Section 5050(b) that was approved by the Board earlier at this meeting. He added that CalCPA indicated that it is their intent that all of the Board-approved language be included in AB 1868. Mr. Waldman indicated that the Legislative Committee recommended that the Board adopt a position supporting this bill if it is amended to include all of the Board’s language.

Ms. Tindel indicated that this bill contained critical issues for consumers and CalCPA would appreciate the Board’s strong support and testimony when it is heard on April 4, 2006. Mr. Blanc indicated that he was planning to attend the hearing.

It was moved by Mr. Waldman, seconded by Dr. Charney, and carried to adopt a “support if amended” position on AB 1868. Ms. Hillebrand was opposed and Ms. Sos was temporarily absent.

g. SB 503 (Figueroa) – Accountants.

Mr. Waldman reported that SB 503 contains the Board’s proposed statute changes related to foreign accountants, fees, and peer review. At its February 2006 meeting, the Board adopted a “support” position on SB 503. Last week Ms. Sigmann was informed that Senator Figueroa does not intend to move forward with SB 503 at this time, and another bill will have to be found for the language on peer review and fees. The Legislative Committee recommended no change to the Board’s position on this bill. The Board concurred with the recommendation.

Memorandum

Board Agenda Item III.A
March 16-17, 2006

To : Board Members

Date: March 8, 2006
Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail: awong@cba.ca.gov

From : Aronna Wong 
Legislation/Regulations Coordinator

Subject : Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting

On March 7, 2006, a working group consisting of Board members Renata Sos and Gail Hillebrand, representatives of the profession, legislative staff, Board staff and legal counsel met at the Board office to discuss and fine-tune the statute changes approved by the Board at its meeting of February 23, 2006. Julie D'Angelo Fellmeth of the Center for Public Interest Law participated by conference call. Since all Board members were unable to attend this meeting, Ronald Blanc asked that there be a brief explanation of how these modifications were developed. Attachments 1 and 2 provide the working group's recommendations for your consideration and action. Attachment 1 provides the language from that meeting, with the proposed revisions to the language approved by the Board in February shown in bold. Attachment 2 provides the language as plain text. The majority of the proposed changes are technical in nature. The changes are as follows:

- **Section 5050:** Section 5050 contains the basic prohibition against the unlawful practice of accountancy in California. Subdivision (b) was added by the Board at its meeting of February 23, 2006. It provides for temporary and incidental practice by CPAs, PAs, and accountancy firms lawfully practicing in another state provided the individual or firm does not solicit clients or assert or imply that they are licensed or registered to practice in California. Subdivision (c) is the language the Board approved in January to address the foreign accountant issue. Concern was raised by the profession that the language in subdivision (b) would prohibit California-registered firms from soliciting clients in California. The language in bold addresses this concern. The cross-reference in subdivision (a) was also revised for consistency with other proposed amendments.
- **Section 5050.1:** Section 5050.1 asserts the Board's jurisdiction over any act that is the practice of public accountancy in California. It was noted that enacting a new law with the statement "Any person who engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board;..." could be interpreted as indicating that prior to this enactment, the Board did not have jurisdiction. This could suggest that all prior disciplinary actions were unlawful. To address this, revised Section 5050.1 is divided into two subdivisions, and subdivision (a)

includes the sentence: "This section is declarative of existing law." The word "who" was changed to "that" to more clearly communicate that "person" includes a firm as well as an individual practitioner.

- **Section 5050.2:** This section was formerly numbered **Section 5054.1**. It authorizes discipline by the Board under the Administrative Procedure Act for violations that occur related to practice under subdivisions (b) or (c) of Section 5050, subdivision (a) of Section 5054, or under Section 5096.12. The working group noted that the numbering of this section as Section 5054.1 was confusing and this section would be more appropriately located following Section 5050.1. The working group also concluded that, in addition to the discipline spelled out in the February 23rd language, it would be appropriate to authorize the Board to issue a fine or an administrative suspension. The revised language includes this change.
- **Section 5050.3:** During the discussion of Section 5054, it was noted that with the broadening of Section 5054 to cover all tax services, it no longer made sense to have a provision that authorizes the Board to adopt regulations limiting the number of tax returns that may be prepared under Section 5054. The working group concluded it would, however, be appropriate to have a new section that authorizes the adoption of regulations related to the proposed new laws. There is already express authority to adopt regulations in the Practice Privilege Article where new Section 5096.12 would be located. Proposed Section 5050.3 would add a similar provision to the article in the Accountancy Act that would include newly amended Section 5050 and new Sections 5050.1 and 5050.2. Legal Counsel, George Ritter, has pointed out if the intent is to provide authority for the Board to narrow the scope of the tax services exception, this language would not be sufficient. He indicated that if the Board wishes to retain the authority to limit the volume of tax returns or services in some way, a provision similar to 5054(b) should be retained in the Accountancy Act.
- **Section 5054:** This section, as it is in current law, provides a narrow exception from licensure, registration, and practice privilege requirements for the preparation of specified tax returns. The February 23, 2006, language approved by the Board expanded the provisions of this section to cover all tax services. Revised language also permits out-of-state CPAs employed by California-registered firms to provide services under this section. It was pointed out that the proposed amendments to Section 5054 could be confusing and could create ambiguities regarding the application of the jurisdictional provisions in proposed Sections 5050.1 and 5050.2. The amendments to Section 5054 were re-drafted to address these concerns.
- **Section 5096.12:** This section would permit a firm to practice through a practice privilege holder without getting a California registration. Amendments clarify that by practicing under this section a firm is deemed to have given its consent to the Board's jurisdiction. Amendments also permit the Board to issue a fine for a violation of this section.

The working group noted that some had suggested that this section should not apply to attest services. Because this involves a policy issue rather than the fine-tuning of language, Board action is required. The working group did not discuss this issue, and participants at that meeting were asked to be prepared to discuss it at the Board meeting. If the Board, at this meeting, supports such a change, a sentence can be added stating: "This section does not apply to attest services." It should be noted that the statute on peer review contains a definition of attest services as follows: "'Attest services' include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, 'attest services' shall not include the issuance of compiled financial statements." This definition can be cross-referenced in Section 5096.12, or, if the Board chooses, a different definition can be added to Section 5096.12.

Another issue that was identified is the fact that staff will have no means of identifying what firms are practicing under this section. The practice privilege Notification Form requires only the name of the firm. However, different firms may have the same name. Without collecting the Federal Tax Payer Identification Number used when filing a federal business tax return as a unique identifier, it would not be possible to identify the number of firms practicing under this section and the practice privilege holders these firms employ. This information would be essential for data-gathering purposes as well as implementing certain sections of the statutory changes. The firm's address and main telephone number would also be important, and are not currently required on the Practice Privilege Notification Form. If this requirement is specified in the statute, the Notification Form can be revised in an expedited manner as a change without regulatory effect.

Attachments



CALIFORNIA BOARD OF ACCOUNTANCY

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Attachment 1

(Proposed revisions to the language approved by the Board at the February 23, 2006, meeting are shown in bold.)

Section 5050.

(a) Except as provided in subdivisions (b) and (c) of this section, **subdivisions subdivision (a) and (b)** of Section 5054, and Section 5096.12, ~~No~~ **no** person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state provided that ~~the individual or firm does not solicit California clients and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.~~ **an individual providing services under this subdivision may not solicit California clients and may not assert or imply that the individual is licensed to practice public accountancy in California. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients and may not assert or imply that the firm is licensed to practice public accountancy in California.** This subdivision shall become inoperative on January 1, 2011, and as of that date is repealed.

~~(b)~~ *(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country provided that:*

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).¹

¹ The language in subdivision (c) in italics was previously approved by the Board, recommended to the Legislature, and currently contained in SB 503.

Section 5050.1.

(a) Any person ~~who~~ that engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board. This subdivision is declarative of existing law.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory ~~agency~~ authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the Board against or involving that person.

Section ~~5054.1~~ 5050.2.

(a) The Board may revoke, suspend, ~~issue a fine pursuant to Article 6.5 of this chapter~~, or otherwise restrict or discipline the authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 for any person for any act which would be a violation of this chapter or ground for discipline against a licensee or practice privilege holder, or ground for denial of a license or practice privilege under the Code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the ~~temporary practice~~ authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the ~~temporary practice~~ authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act which would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that Section.

Section 5050.3.

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

Section 5054.

~~(a) Notwithstanding any other provision of this chapter, an~~ An individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services ~~prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death~~ without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) subject to the restrictions provided that in paragraph (1) or paragraph (2) of this subdivision:

(1) If the firm is not registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual or firm does shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual or firm does shall not solicit California clients; and the individual or firm does shall not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(2) If the firm is registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual shall not solicit California clients; and the individual shall not assert or imply that he or she is licensed or registered to practice public accountancy in California.

~~(b) Notwithstanding subdivision (a), any firm which is licensed to practice public accountancy in this state may provide the services set forth in subdivision (a) through individuals qualified to practice under subsection (a) however the restrictions of subsection (a) shall not apply to the firm.~~

~~(b) (c) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).~~

~~(b) (d) This section shall become inoperative on January 1, 2011, and as of that date is repealed.~~

Section 5096.12.

(a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm **that engages in practice under this section is deemed to consent** ~~consents~~ to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, **issue a fine pursuant to Article 6.5 of this chapter**, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.



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Attachment 2

(Changes from current law are shown in underline and strikeout.)

Section 5050.

(a) Except as provided in subdivisions (b) and (c) of this section, subdivision (a) of Section 5054, and Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state provided that an individual providing services under this subdivision may not solicit California clients and may not assert or imply that the individual is licensed to practice public accountancy in California. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients and may not assert or imply that the firm is licensed to practice public accountancy in California. This subdivision shall become inoperative on January 1, 2011, and as of that date is repealed.

(b) (c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).¹

Section 5050.1.

(a) Any person that engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board; . This subdivision is declarative of existing law.

¹ The language in subdivision (c) in italics was previously approved by the Board, recommended to the Legislature, and currently contained in SB 503.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the Board against or involving that person.

Section 5050.2.

(a) The Board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any person for any act which would be a violation of this chapter or ground for discipline against a licensee or practice privilege holder, or ground for denial of a license or practice privilege under the Code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act which would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that Section.

Section 5050.3.

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

Section 5054.

(a) ~~Notwithstanding any other provision of this chapter, an~~ An individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services ~~prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death~~ without obtaining a permit to practice public accountancy

issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) subject to the restrictions provided that in paragraph (1) or paragraph (2) of this subdivision:

(1) If the firm is not registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual or firm ~~does~~ shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual or firm ~~does~~ shall not solicit California clients; and the individual or firm ~~does~~ shall not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(2) If the firm is registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual shall not solicit California clients; and the individual shall not assert or imply that he or she is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

(b) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Section 5096.12.

(a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Memorandum

Board Agenda Item III.A
March 16-17, 2006

To : Board Members

Date: March 15, 2006
Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail: awong@cba.ca.gov

From : Aronna Wong 
Legislation/Regulations Coordinator

Subject : Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting

Attached for your consideration is draft statutory language to address the concerns related to firm identification discussed in the last paragraph of my March 8, 2006, memo related to this agenda item.

For ease of reference, the excerpt from that memo is cited below.

"Another issue that was identified is the fact that staff will have no means of identifying what firms are practicing under this section. The Practice Privilege Notification Form requires only the name of the firm. However, different firms may have the same name. Without collecting the Federal Tax Payer Identification Number used when filing a federal business tax return as a unique identifier, it would not be possible to identify the number of firms practicing under this section and the practice privilege holders these firms employ. This information would be essential for data-gathering purposes as well as implementing certain sections of the statutory changes. The firm's address and main telephone number would also be important, and are not currently required on the Practice Privilege Notification Form. If this requirement is specified in the statute, the Notification Form can be revised in an expedited manner as a change without regulatory effect."

Attachment

DRAFT STATUTE TO GATHER UNIQUE IDENTIFICATION DATA ON FIRMS
PRACTICING THROUGH PRACTICE PRIVILEGE HOLDERS

Section 5096.13. The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its Federal Tax Payer Identification Number.

Board Agenda Item III.A

March 16-17, 2006

Comment Only – *Section 5116.6 defines “licensee” for the purposes of Article 6.5 (which includes fine authority) broadly enough to include all forms of authorized practice.*

Proposed Section 5035.3 – For purposes of Sections 5050, 5054, and 5096.12, “firm” includes any entity which is authorized to practice public accountancy as a firm under the laws of another state.

Proposed Section 5054(b) – The board may, by regulation, limit the nature and quantity of tax services provided pursuant to subdivision (a) of Section 5054.

Subject: Agenda Item III.A - Additional Material

From: TheresaSiepert@cba.ca.gov

Date: Fri, 10 Mar 2006 18:10:57 -0800

To: rdavila@marshall.usc.edu, tiino@deloitte.com, clifton.johnson@uboc.com, hillga@consumer.org, ddriftmier@vtdcpa.com, milesos@msn.com, ronblanc.lawyer@hotmail.com, richar5507@aol.com, stuart.waldman@asm.ca.gov, jaxmarkets@aol.com, rosiedane@hotmail.com, zunigaflowers@yahoo.com, david.swartz@gbbcpa.com, prekel@aol.com, rmiller@mngcpa.com, cpalobby@calcpa.org, bruce.allen@calcpa.org, jeannie.tindel@calcpa.org, ed@eebcpas.com, dcalegari@gosca.com, kristine.caratan@mossadams.com, mchakarun@nsacct.org, julied@SanDiego.edu, supercpa@pacbell.net, michael.duffey02@ey.com, bob@eebcpas.com, gene.erbstoesser@ey.com, tax@csea.org, kdbare@pacbell.net, amkcpacfe@sbcglobal.net, iralandis@hotmail.com, ke6vgv@aol.com, dmcnallycpa@earthlink.net, kreid@mcnallytemple.com, rrobinson@rrassoc.com, harold.s.schultz@us.pwc.com, sturg@sbcglobal.net, johnt@chevrontexaco.com, neal.west@mossadams.com, artbcpa@aol.com, gbong@bbrcpa.com, rbulosan@lautze.com, harish.khanna@us.pwc.com, vicki@americanfinancialtax.com, kplatz@schwartzplatz.com, dawn@gbacpa.com, csigmann@cba.ca.gov, mcrocker@cba.ca.gov, gnewington@cba.ca.gov, tsiepert@cba.ca.gov, pfranz@cba.ca.gov, awong@cba.ca.gov, mgale@cba.ca.gov, vosborn@cba.ca.gov, pbruning@cba.ca.gov, msantaga@cba.ca.gov, George_Ritter@dca.ca.gov, Michael.Granen@doj.ca.gov, Jeanne.Werner@doj.ca.gov, Kristin_Triepke@dca.ca.gov, katy.cpa@verizon.net, robin.hartley@sen.ca.gov, doreatheajohnson@dca.ca.gov, rhohnsbeen@aol.com, bluok@aol.com, david.link@sen.ca.gov, choy@rrassoc.com, rriley1295@aol.com, bill.gage@sen.ca.gov, antonette_sorrick@dca.ca.gov, khansen@kpmg.com, ross.warren@asm.ca.gov, eh4@sbcglobal.net

Attached is additional material to be considered under Agenda Item III.A - Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting Related to Practice Privilege. Please add this to materials previously received for the March Board meeting. Thank you. T

(See attached file: Agenda Item III.A Additional Material.doc)

Agenda Item III.A Additional Material.doc

Content-Type: application/msword
Content-Encoding: base64

Memorandum

Board Agenda Item III.A
March 16-17, 2006

To : Ronald Blanc, President
Board Members

Date : March 10, 2006

Telephone : (916) 561-1718

Facsimile : (916) 263-3674

E-mail : csigmann@cba.ca.gov

From : Carol Sigmann
Executive Officer

Subject : Agenda Item III.A – Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting Related to Practice Privilege

Counsel has advised me of the following issue that needs discussion at the upcoming Board meeting. Business and Professions Code Section 5035.1 defines "firm" to mean a sole proprietorship, corporation, or partnership. The language approved by the Board at its February 23, 2006, meeting, specifically Sections 5050, 5054 and 5096.12, are potentially ambiguous as to whether or not they are intended to permit practice by an out-of-state firm which may not meet the definition of firm under Section 5035.1. One example would be out-of-state firms which are limited liability companies practicing public accountancy in their home state. Also, the wording of Sections 5050, 5054 and 5096.12 differs, so it is possible that, without clarification, authorization for out-of-state firms to practice may vary among these sections.

Subject: Agenda Item III.A - Consideration of Modification to the Proposed Statutory Language Adopted by the Board at its February 23, 2006 Mtg

From: TheresaSiepert@cba.ca.gov

Date: Wed, 8 Mar 2006 17:09:10 -0800

To: rdavila@marshall.usc.edu, molga@comcast.net, tiino@deloitte.com, clifton.johnson@uboc.com, hillga@consumer.org, ddriftmier@vtdcpa.com, milesos@msn.com, ronblanc.lawyer@hotmail.com, richar5507@aol.com, stuart.waldman@asm.ca.gov, jaxmarkets@aol.com, rosiedane@hotmail.com, zunigaflowers@yahoo.com, david.swartz@gsbccpa.com, prekel@aol.com, rmiller@mngcpa.com, cpalobby@calcpa.org, bruce.allen@calcpa.org, jeannie.tindel@calcpa.org, ed@eebcpas.com, dcalegari@gosca.com, kristine.caratan@mossadams.com, mchakarun@nsacct.org, julied@SanDiego.edu, supercpa@pacbell.net, michael.duffey02@ey.com, bob@eebcpas.com, gene.erbstoesser@ey.com, tax@csea.org, kdbare@pacbell.net, amkcpacfe@sbcglobal.net, iralandis@hotmail.com, ke6vgv@aol.com, dmcnallycpa@earthlink.net, kreid@mcnallytemple.com, rrobinson@rrassoc.com, harold.s.schultz@us.pwc.com, sturg@sbcglobal.net, johnt@chevrontexaco.com, neal.west@mossadams.com, artbcpa@aol.com, gbong@bbrcpa.com, rbulosan@lautze.com, harish.khanna@us.pwc.com, vicki@americanfinancialtax.com, kplatz@schwartzplatz.com, dawn@gbacpa.com, csigmann@cba.ca.gov, mcrocker@cba.ca.gov, gnewington@cba.ca.gov, tsiepert@cba.ca.gov, pfranz@cba.ca.gov, awong@cba.ca.gov, mgale@cba.ca.gov, vosborn@cba.ca.gov, pbruning@cba.ca.gov, msantaga@cba.ca.gov, George_Ritter@dca.ca.gov, Michael.Granen@doj.ca.gov, Jeanne.Werner@doj.ca.gov, Kristin_Tripke@dca.ca.gov, katy.cpa@verizon.net, robin.hartley@sen.ca.gov, doreathea_johnson@dca.ca.gov, rhohnsbeen@aol.com, bluok@aol.com, david.link@sen.ca.gov, choy@rrassoc.com, rriley1295@aol.com, bill.gage@sen.ca.gov, antonette_sorrick@dca.ca.gov, khansen@kpmg.com, ross.warren@asm.ca.gov, eh4@sbcglobal.net

Attached is Agenda Item III.A as referenced above in the subject line for the March 16-17, 2006, Board meeting. Please add this item to the materials previously received for this meeting. Thank you.

Theresa Siepert
Executive Analyst
(916) 561-1715

(See attached file: Agenda Item III.A.pdf)

Agenda Item III.A.pdf

Content-Type: application/pdf

Content-Encoding: base64

Memorandum

Board Agenda Item III.A
March 16-17, 2006

To : Board Members

Date: March 8, 2006
Telephone : (916) 561-1788
Facsimile : (916) 263-3674
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From : Aronna Wong 
Legislation/Regulations Coordinator

Subject : Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting

On March 7, 2006, a working group consisting of Board members Renata Sos and Gail Hillebrand, representatives of the profession, legislative staff, Board staff and legal counsel met at the Board office to discuss and fine-tune the statute changes approved by the Board at its meeting of February 23, 2006. Julie D'Angelo Fellmeth of the Center for Public Interest Law participated by conference call. Since all Board members were unable to attend this meeting, Ronald Blanc asked that there be a brief explanation of how these modifications were developed. Attachments 1 and 2 provide the working group's recommendations for your consideration and action. Attachment 1 provides the language from that meeting, with the proposed revisions to the language approved by the Board in February shown in bold. Attachment 2 provides the language as plain text. The majority of the proposed changes are technical in nature. The changes are as follows:

- **Section 5050:** Section 5050 contains the basic prohibition against the unlawful practice of accountancy in California. Subdivision (b) was added by the Board at its meeting of February 23, 2006. It provides for temporary and incidental practice by CPAs, PAs, and accountancy firms lawfully practicing in another state provided the individual or firm does not solicit clients or assert or imply that they are licensed or registered to practice in California. Subdivision (c) is the language the Board approved in January to address the foreign accountant issue. Concern was raised by the profession that the language in subdivision (b) would prohibit California-registered firms from soliciting clients in California. The language in bold addresses this concern. The cross-reference in subdivision (a) was also revised for consistency with other proposed amendments.
- **Section 5050.1:** Section 5050.1 asserts the Board's jurisdiction over any act that is the practice of public accountancy in California. It was noted that enacting a new law with the statement "Any person who engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board;..." could be interpreted as indicating that prior to this enactment, the Board did not have jurisdiction. This could suggest that all prior disciplinary actions were unlawful. To address this, revised Section 5050.1 is divided into two subdivisions, and subdivision (a)

includes the sentence: "This section is declarative of existing law." The word "who" was changed to "that" to more clearly communicate that "person" includes a firm as well as an individual practitioner.

- **Section 5050.2:** This section was formerly numbered **Section 5054.1**. It authorizes discipline by the Board under the Administrative Procedure Act for violations that occur related to practice under subdivisions (b) or (c) of Section 5050, subdivision (a) of Section 5054, or under Section 5096.12. The working group noted that the numbering of this section as Section 5054.1 was confusing and this section would be more appropriately located following Section 5050.1. The working group also concluded that, in addition to the discipline spelled out in the February 23rd language, it would be appropriate to authorize the Board to issue a fine or an administrative suspension. The revised language includes this change.
- **Section 5050.3:** During the discussion of Section 5054, it was noted that with the broadening of Section 5054 to cover all tax services, it no longer made sense to have a provision that authorizes the Board to adopt regulations limiting the number of tax returns that may be prepared under Section 5054. The working group concluded it would, however, be appropriate to have a new section that authorizes the adoption of regulations related to the proposed new laws. There is already express authority to adopt regulations in the Practice Privilege Article where new Section 5096.12 would be located. Proposed Section 5050.3 would add a similar provision to the article in the Accountancy Act that would include newly amended Section 5050 and new Sections 5050.1 and 5050.2. Legal Counsel, George Ritter, has pointed out if the intent is to provide authority for the Board to narrow the scope of the tax services exception, this language would not be sufficient. He indicated that if the Board wishes to retain the authority to limit the volume of tax returns or services in some way, a provision similar to 5054(b) should be retained in the Accountancy Act.
- **Section 5054:** This section, as it is in current law, provides a narrow exception from licensure, registration, and practice privilege requirements for the preparation of specified tax returns. The February 23, 2006, language approved by the Board expanded the provisions of this section to cover all tax services. Revised language also permits out-of-state CPAs employed by California-registered firms to provide services under this section. It was pointed out that the proposed amendments to Section 5054 could be confusing and could create ambiguities regarding the application of the jurisdictional provisions in proposed Sections 5050.1 and 5050.2. The amendments to Section 5054 were re-drafted to address these concerns.
- **Section 5096.12:** This section would permit a firm to practice through a practice privilege holder without getting a California registration. Amendments clarify that by practicing under this section a firm is deemed to have given its consent to the Board's jurisdiction. Amendments also permit the Board to issue a fine for a violation of this section.

The working group noted that some had suggested that this section should not apply to attest services. Because this involves a policy issue rather than the fine-tuning of language, Board action is required. The working group did not discuss this issue, and participants at that meeting were asked to be prepared to discuss it at the Board meeting. If the Board, at this meeting, supports such a change, a sentence can be added stating: "This section does not apply to attest services." It should be noted that the statute on peer review contains a definition of attest services as follows: "'Attest services' include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, 'attest services' shall not include the issuance of compiled financial statements." This definition can be cross-referenced in Section 5096.12, or, if the Board chooses, a different definition can be added to Section 5096.12.

Another issue that was identified is the fact that staff will have no means of identifying what firms are practicing under this section. The practice privilege Notification Form requires only the name of the firm. However, different firms may have the same name. Without collecting the Federal Tax Payer Identification Number used when filing a federal business tax return as a unique identifier, it would not be possible to identify the number of firms practicing under this section and the practice privilege holders these firms employ. This information would be essential for data-gathering purposes as well as implementing certain sections of the statutory changes. The firm's address and main telephone number would also be important, and are not currently required on the Practice Privilege Notification Form. If this requirement is specified in the statute, the Notification Form can be revised in an expedited manner as a change without regulatory effect.

Attachments



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Attachment 1

(Proposed revisions to the language approved by the Board at the February 23, 2006, meeting are shown in bold.)

Section 5050.

(a) Except as provided in subdivisions (b) and (c) of this section, **subdivisions subdivision (a) and (b)** of Section 5054, and Section 5096.12, ~~No~~ **no** person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state provided that ~~the individual or firm does not solicit California clients and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.~~ an individual providing services under this subdivision may not solicit California clients and may not assert or imply that the individual is licensed to practice public accountancy in California. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients and may not assert or imply that the firm is licensed to practice public accountancy in California. This subdivision shall become inoperative on January 1, 2011, and as of that date is repealed.

~~(b)~~ *(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country provided that:*

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).¹

¹ The language in subdivision (c) in italics was previously approved by the Board, recommended to the Legislature, and currently contained in SB 503.

Section 5050.1.

(a) Any person ~~who~~ **that** engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board. This subdivision is declarative of existing law.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory ~~agency~~ **authority** of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the Board against or involving that person.

Section ~~5054.4~~ 5050.2.

(a) The Board may revoke, suspend, **issue a fine pursuant to Article 6.5 of this chapter**, or otherwise restrict or discipline the authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 **for any person** for any act which would be a violation of this chapter or ground for discipline against a licensee or practice privilege holder, or ground for denial of a license or practice privilege under the Code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, ~~or~~ subdivision (a) ~~or (b)~~ of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the **temporary practice** authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the **temporary practice** authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act which would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that Section.

Section 5050.3.

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

Section 5054.

(a) ~~Notwithstanding any other provision of this chapter, an~~ An individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services ~~prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death~~ without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) subject to the restrictions provided that in paragraph (1) or paragraph (2) of this subdivision:

(1) If the firm is not registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual or firm does shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual or firm does shall not solicit California clients; and the individual or firm does shall not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(2) If the firm is registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual shall not solicit California clients; and the individual shall not assert or imply that he or she is licensed or registered to practice public accountancy in California.

(b) ~~Notwithstanding subdivision (a), any firm which is licensed to practice public accountancy in this state may provide the services set forth in subdivision (a) through individuals qualified to practice under subsection (a) however the restrictions of subsection (a) shall not apply to the firm.~~

(b) (c) ~~The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).~~

(b) (d) ~~This section shall become inoperative on January 1, 2011, and as of that date is repealed.~~

Section 5096.12.

(a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm **that engages in practice under this section is deemed to consent consents** to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, **issue a fine pursuant to Article 6.5 of this chapter**, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.



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Attachment 2

(Changes from current law are shown in underline and strikeout.)

Section 5050.

(a) Except as provided in subdivisions (b) and (c) of this section, subdivision (a) of Section 5054, and Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state provided that an individual providing services under this subdivision may not solicit California clients and may not assert or imply that the individual is licensed to practice public accountancy in California. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients and may not assert or imply that the firm is licensed to practice public accountancy in California. This subdivision shall become inoperative on January 1, 2011, and as of that date is repealed.

(b) (c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).¹

Section 5050.1.

(a) Any person that engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board. This subdivision is declarative of existing law.

¹ The language in subdivision (c) in italics was previously approved by the Board, recommended to the Legislature, and currently contained in SB 503.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the Board against or involving that person.

Section 5050.2.

(a) The Board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any person for any act which would be a violation of this chapter or ground for discipline against a licensee or practice privilege holder, or ground for denial of a license or practice privilege under the Code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act which would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that Section.

Section 5050.3.

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

Section 5054.

(a) ~~Notwithstanding any other provision of this chapter, an~~ An individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services ~~prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death~~ without obtaining a permit to practice public accountancy

issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) subject to the restrictions provided that in paragraph (1) or paragraph (2) of this subdivision:

(1) If the firm is not registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual or firm ~~does~~ shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual or firm ~~does~~ shall not solicit California clients; and the individual or firm ~~does~~ shall not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(2) If the firm is registered in California, the following restrictions apply to the practice of public accountancy under this section: the individual shall not physically enter California to practice public accountancy pursuant to Section 5051; the individual shall not solicit California clients; and the individual shall not assert or imply that he or she is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

(b) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Section 5096.12.

(a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Subject: For Information Only - In Consideration With Agenda Item III.A

From: TheresaSiepert@cba.ca.gov

Date: Fri, 10 Mar 2006 11:29:25 -0800

To: rdavila@marshall.usc.edu, tiino@deloitte.com, clifton.johnson@uboc.com, hillga@consumer.org, ddriftmier@vtdcpa.com, milesos@msn.com, ronblanc.lawyer@hotmail.com, richar5507@aol.com, stuart.waldman@asm.ca.gov, jaxmarkets@aol.com, rosiedane@hotmail.com, zunigaflowers@yahoo.com, david.swartz@gsbcpa.com, prekel@aol.com, rmiller@mngcpa.com, cpalobby@calcpa.org, bruce.allen@calcpa.org, jeannie.tindel@calcpa.org, ed@eebcpas.com, dclegari@gosca.com, kristine.caratan@mossadams.com, mchakarun@nsacct.org, julied@SanDiego.edu, supercpa@pacbell.net, michael.duffey02@ey.com, bob@eebcpas.com, gene.erbstoesser@ey.com, tax@csea.org, kdbare@pacbell.net, amkcpacfe@sbcglobal.net, iralandis@hotmail.com, ke6vgv@aol.com, dmcnallycpa@earthlink.net, kreid@mcnallytemple.com, rrobinson@rrassoc.com, harold.s.schultz@us.pwc.com, sturg@sbcglobal.net, johnt@chevrontexaco.com, neal.west@mossadams.com, artbcpa@aol.com, gbong@bbrcpa.com, rbulosan@lautze.com, harish.khanna@us.pwc.com, vicki@americanfinancialtax.com, kplatz@schwartzplatz.com, dawn@gbacpa.com, csigmann@cba.ca.gov, mcrocker@cba.ca.gov, gnewington@cba.ca.gov, tsiepert@cba.ca.gov, pfranz@cba.ca.gov, awong@cba.ca.gov, mgale@cba.ca.gov, vosborn@cba.ca.gov, pbruning@cba.ca.gov, msantaga@cba.ca.gov, George_Ritter@dca.ca.gov, Michael.Granen@doj.ca.gov, Jeanne.Werner@doj.ca.gov, Kristin_Triepke@dca.ca.gov, katy.cpa@verizon.net, robin.hartley@sen.ca.gov, doreathea_johnson@dca.ca.gov, rhohnsbeen@aol.com, bluok@aol.com, david.link@sen.ca.gov, choy@rrassoc.com, rriley1295@aol.com, bill.gage@sen.ca.gov, antonette_sorricks@dca.ca.gov, khansen@kpmg.com, ross.warren@asm.ca.gov, eh4@sbcglobal.net

Attached is a March 6, 2006, letter from Richard Robinson to Senator Figueroa regarding the actions taken by the Board at its February 23, 2006, meeting. Please add this to the agenda items previously received. Thanks. T
(See attached file: Agenda Item III.A Robinson 3-6-06 Ltr to Sen Figueroa.pdf)

Agenda Item III.A Robinson 3-6-06 Ltr to Sen Figueroa.pdf

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March 6, 2006

The Honorable Liz Figueroa
California State Senate
State Capitol, Room 4061
Sacramento, CA 95814

RE: Senate Bill 503 (Figueroa)

Senator Figueroa,

I was informed on Thursday by your counsel, David Link, that you had expressed VERY significant concerns with the actions of the Board of Accountancy made after two days of public hearings held on February 22 and 23.

The California practice privilege law and the regulations promulgated by the Board thereunder were intended to bring down antiquated barriers to the practice of public accountancy across state lines – giving Californians the widest choice of service providers and expanded access to the highest levels of expertise, while protecting the consumers of this state.

This entire controversy results from FAQs that were posted on the Board's website in late December, claiming an extraterritorial reach that would require CPAs throughout the country to obtain California practice privileges even though they would never enter the state – AND to register their firms in California. The Board approved an earlier set of FAQs after a public hearing. However, the Board was not consulted on the new FAQs added in very late December. The unapproved policies reflected in the FAQs actually increased barriers to interstate practice, and caused an uproar in California and across the country.

Board President Ron Blanc and his colleagues moved swiftly to address the new issues at their regular January meeting and in emergency CPC and Board meetings in February. The controversial FAQs were reviewed and then removed from the website. The Board heard the views of all interested parties and spent many hours crafting a proposed solution that was recommended to the Legislature with only one dissenting vote. The Board's deliberative process was widely praised for its transparency, rigorous analysis and thorough debate.

The Board's proposal was communicated to its licensees and to the nation by a posting on its website. At the request of Board leadership, the AICPA communicated the solution to all CPAs in the country. It was met with general approval – and considerable relief. Now, however, we understand that concerns have been raised about key elements of the solution:

- It is suggested that the exception for “temporary and incidental practice” under proposed Section 5050(b) somehow conflicts with the separate exception for tax services under Section 5054.
- It is suggested that the exception for tax services is not needed because the “temporary and incidental practice” under Section 5050(b) somehow conflicts with the separate exception for tax services under Section 5054.
- It is suggested that the Board’s exception to firm registration requirements for out-of-state firms is unnecessary and should be deleted.

The Board’s proposals are not a collection of separate items that are severable from the others. The Board has recommended an integrated solution that requires the implementation of all portions. Removal of the exceptions for tax services and firm registration will create very significant barriers to interstate practice and cause even greater controversy than was generated by the FAQs.

I would respectfully reply to the points of concern as follows.

(1) There is no conflict whatsoever between Sections 5050(b) and 5054. They are two entirely separate exceptions that address different types of practice. Section 5054 addresses only tax services, while Section 5050(b) creates a separate exception for all other services.

(2) The “temporary/incidental” exception would not cover most tax services. The restoration of temporary and incidental practice via the proposed revisions to Section 5050 will NOT solve the problems of non-resident tax practitioners that were addressed by the revision to Section 5054. If a California company wishes to have its tax return prepared by a New York CPA who is an expert in matters to be addressed in the return, that work is clearly NOT incidental to “practice in another state” and thus there is NO exception under Section 5050. The New York CPA (who never enters California) must obtain a California practice privilege.

(3) The firm registration requirement creates an enormous trade barrier. Elimination of the carefully-crafted firm registration exception would mean that any time a CPA from another state provides services – whether under a practice privilege or otherwise – the CPA’s firm is also be required to register in California. While a practice privilege can be obtained very swiftly, it takes much longer to register a firm. Moreover, to register in California, a firm must include one California licensee – and the processing time for an individual license can take many months. If the New York CPA in the example above is in a firm that is not registered in California, he or she would probably be required to decline the engagement because there would not enough time to obtain a firm registration (including the required individual California license) before the tax return is due.

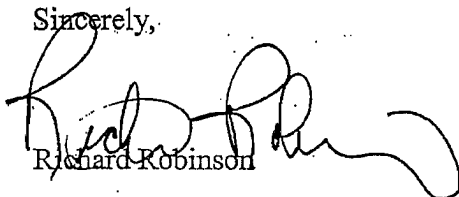
The real result of the elimination of the tax and firm registration exemptions will be the creation of an interstate trade barrier of a kind not often seen in this country: California is saying that no CPA in any part of the country can prepare a tax return for a California resident or California company unless that CPA has a California license or is in a firm that has a California licensee. Many will conclude that this is a blatant attempt to favor the economic interests of California licensees.

The creation of such a barrier is particularly unreasonable because the Board was careful to assure that the interests of California consumers are protected. The new proposed Section 5050.1 deems all persons practicing public accountancy in this state to have consented to the "personal, subject matter and disciplinary jurisdiction of the Board." Moreover, Section 5096.12(a) specifies that a non-registered firm offering services in California "consents to the personal, subject matter and regulatory jurisdiction of the Board" and the board "may revoke, suspend, or otherwise restrict or discipline the firm . . ." The Board can act against the New York CPA described above – and his or her firm – through new Sections 5050.1 and 5096.12 without creating any trade barriers.

CPAs across California and the nation are watching this process closely. As I have noted, the Board's solution has been highly praised. The rejection of key portions will cause an even greater controversy than the FAQs – and might even result in retaliation against California and its CPAs.

If you have any questions please contact me at (916) 552-5830 or email rrobinson@rrassoc.com.

Sincerely,



Richard Robinson

Cc: The Honorable Gloria Negrete McLeod, Chair, Assembly Business and Professions
Ross Warren, Principal Consultant, Assembly Business and Professions
Ted Blanchard, Consultant, Assembly Republican Caucus
Crystal Chase, Consultant, Senate Republican Caucus
The Honorable Rudy Bermudez
Richard Costigan, Legislative Secretary, Office of the Governor
Ron Blanc, President, California Board of Accountancy
Members, California Board of Accountancy
Carol Sigmann, Executive Officer, California Board of Accountancy



University of San Diego

Center for Public Interest Law

Children's Advocacy Institute

Energy Policy Initiatives Center

March 14, 2006

Ron Blanc, President, and Members
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

re: Request for Reconsideration of "Tax Services" Issue

Dear President Blanc and Board Members:

The Center for Public Interest Law (CPIL) respectfully requests that CBA reconsider its support position on the profession's proposed expansion of Business and Professions Code section 5054 to include all "tax services." This provision is already contained in AB 1868 (Bermudez), which CPIL intends to oppose.

As you know, AB 1868 is urgency legislation sponsored by the accounting profession. It purports to provide a "quick fix" to unintended problems arising from the Legislature's enactment and CBA's implementation of the "practice privilege" program created in legislation that became effective on January 1, 2006. For the most part, AB 1868 does just that. However, this urgency legislation — which is supposed to be limited to fixing temporarily a narrow and circumscribed problem — is also inappropriately being used as a vehicle to enact a broader and arguably unrelated proposal that, if enacted, will, at best, cast into confusion California's ability to police CPAs and CPA firms engaged in wide-ranging tax consulting (which includes the controversial practice of marketing abusive tax shelters).

Specifically, the profession's proposed amendment to section 5054 will essentially deregulate — on the state level — the provision of "tax services" by CPAs and CPA firms to California consumers and businesses. The provision of "tax services" is very clearly the practice of public accountancy under section 5051. Yet the proposed amendment to section 5054 — which is not necessary to temporarily fix the problems allegedly posed by the practice privilege program — will allow any out-of-state CPA or CPA firm to provide any and all "tax services" to any California consumer or business without a California CPA license, without a California practice privilege, without a California CPA firm registration, and without any notice to the Board. This proposed amendment will punch a gaping loophole in CBA's ability to protect California citizens and businesses from incompetent, dishonest, or unscrupulous out-of-state CPAs and CPA firms that provide "tax services."

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CPIL website: www.cpil.org • CAI website: www.caichildlaw.org

Reply to: ☐ San Diego Office ☐ Sacramento Office

Background: The Practice Privilege Program

Prior to January 1, 2006, cross-border accounting practice was permitted under section 5050. That section allowed any out-of-state or foreign CPA to practice public accountancy in California without notice to the Board so long as that practice was “temporary” and “incidental to” accounting practice in the CPA’s home state or nation. Neither of those terms were ever defined in statute or regulation — thus allowing non-California CPAs to freely practice here without notifying the Board, upon their own self-determination that their practice was “temporary” and “incidental to” accounting work done in their home state. Obviously, that provision severely limited CBA’s ability to protect the public from incompetent and dishonest CPAs, and CPIL supported its closure through the “practice privilege” program created in SB 1543 (Figueroa) (Chapter 921, Statutes of 2004) and SB 229 (Figueroa) (Chapter 658, Statutes of 2005).

The practice privilege program seeks to facilitate cross-border practice by allowing eligible out-of-state CPAs to practice public accountancy in California without having to obtain full licensure by CBA. At the same time, it ensures that CBA is informed of the presence and practice of out-of-state CPAs in California, and — in the event of misconduct — it confers enforcement jurisdiction on the Board and enables it to immediately suspend the practice privilege of an out-of-state CPA to protect California consumers and businesses.

As you may know, the practice privilege concept was instigated by the accounting profession (and in fact has its roots in section 23 of the Uniform Accountancy Act). Further, the accounting profession was actively involved in the drafting of SB 1543 and SB 229 (and regulations to implement them) over an arduous two-year period of public CBA meetings and debate. In other words, both bills were crafted at the insistence of and with the assistance of the accounting profession. The profession — actively represented by multiple lawyers and lobbyists — had every opportunity to fully evaluate the impact of the new statutes, analyze in detail the interaction of the new statutes with existing law which was not being changed, question Board members and staff as to the application and interpretation of these new laws at public meetings, and to satisfy itself that this is what it wanted. During the entire two-year period in which it actively assisted in drafting both bills and urged their passage, the profession failed to foresee any of the problems that it says have occurred, and the profession now wants to temporarily undo — through AB 1868 — what has been done to enable fully informed correction and improvement of the practice privilege program by the Board and the Legislature.

Problems Inadvertently Caused by the Practice Privilege Program

The accounting profession asserts that, rather than facilitating cross-border practice, the new practice privilege program has caused significant disruption in its ability to serve its clients across state lines. Although the profession is unable to provide documentation or even an estimate of the concrete number of consumers, CPAs, and/or CPA firms actually affected by the new program, it contends that the following problems have occurred:

Problem #1. Some foreign CPAs must occasionally practice public accountancy in California. They used to do this under section 5050’s “temporary and incidental” exception to the licensure requirement, but that has now been repealed. And foreign CPAs do not qualify for a California practice privilege unless they are licensed by another state in the United States.

Problem #2. Some out-of-state CPAs file tax returns for California consumers and businesses. These tax returns were previously filed by those same out-of-state CPAs under section 5050's "temporary and incidental" exception to the licensure requirement — which has now been repealed. (The profession admits that at least some of this tax practice was neither "temporary" nor "incidental" to home-state practice. It was undertaken pursuant to a lengthy, ongoing professional relationship and was illegal under prior section 5050.) Thus, those out-of-state CPAs must now either (1) limit their tax practice to that allowed by section 5054 (see below), or (2) obtain a practice privilege — and they have known that since January 1, 2005.

Problem #3. Some of those out-of-state CPAs who need to file tax returns for California consumers and business may not qualify for a practice privilege. This assertion is made primarily by the four largest accounting firms; it is difficult to believe that they would hire CPAs who — in large numbers — fail to qualify for a practice privilege under any of the three methods described in the statute.

Problem #4. Some out-of-state CPAs who need to practice public accountancy in California must be able to sign on behalf of their firm, but there is insufficient time to secure a firm registration prior to the deadline to file tax returns. Because of chronic staffing shortages, CBA alone requires 6–8 weeks to process a firm registration application, and that does not count the time, delay, and expense attributable to the need to also file with the California Secretary of State.

"Quick Fix" Provisions Necessary to Temporarily Address These Problems

CBA has voted to support draft legislative changes that will address each of these problems:

■ Problems #1, #2, and #3 described above are addressed through an amendment to section 5050 which temporarily restores "temporary and incidental" practice for out-of-state and foreign CPAs (subject to several conditions which were not part of the pre-2006 "temporary and incidental" law). To protect the public, AB 1868 would also add new sections 5050.1, 5050.2, and 5050.3; these sections confer jurisdiction on the Board to discipline any CPA or firm that practices public accountancy in California, and authorize the Board to adopt regulations to implement the "temporary and incidental" statutes.¹

■ Problem #4 above is being addressed through the addition of new section 5096.12, which temporarily exempts out-of-state CPA firms from the California firm registration requirement when they practice public accountancy in California through a CPA employee who secures a practice privilege. The confluence of new sections 5096.12 and 5050.1 authorize CBA to assert enforcement jurisdiction over both the individual out-of-state CPA and his/her unregistered firm when practicing public accountancy in California.

¹ CPIL reiterates its position that Problems #2 and #3 above could be addressed by simply changing the requirements for a practice privilege. Rather than requiring licensure by a "substantially equivalent" state in order to qualify for a practice privilege, CBA could require a valid CPA license from any other state in the United States. This would make all otherwise-eligible CPAs in the United States eligible to secure a practice privilege from CBA, and would obviate the need to temporarily restore the "temporary and incidental practice" exception to the licensure/practice privilege requirement for U.S.-licensed CPAs. Regrettably, the Board declined to support this proposal.

The Profession's Proposed Amendment to Section 5054

The provisions described above are arguably necessary to give the Board and the Legislature some breathing room in refining the practice privilege program. However, the profession's AB 1868 does not stop there.

AB 1868 would significantly expand section 5054, a very narrow exemption to the California licensure, practice privilege, and firm registration requirements for a very narrow slice of the practice of public accountancy: the preparation of "tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death." CBA drafted section 5054 in 2005; it was added to the Accountancy Act by SB 229 (Figueroa) in 2005 in response to numerous complaints from out-of-state CPAs who had prepared tax returns for years for a client who then relocated to California. Both the CPA and the client wish to continue the relationship, but the CPA does not want to go to the expense of securing a California license or practice privilege just to prepare one tax return. CBA drafted section 5054 in direct and deliberately narrow response to this particular complaint; during 2005, the Board declined to widen the exception to cover "all tax returns" because it believed that CPAs who perform more public accountancy in California than the occasional tax return should simply get a practice privilege — that is precisely why the practice privilege program was created.²

The profession now seeks expansion of the exemption in section 5054 to cover not just "all tax returns" or "all tax return preparation services" but all "**tax services.**" CPIL opposes this amendment to section 5054 for four reasons:

1. This is a significant policy issue which is inappropriate for consideration in urgency legislation designed to address a very different issue. Essentially, this proposed loophole would expose California consumers and businesses to the unlicensed practice of tax consulting, and would severely limit the Board's ability to protect the public because the CPA providing the "tax services" has no license or practice privilege which CBA could discipline, the CPA firm may not be registered in California, and the Board doesn't even know that the tax consulting activity is occurring. Under AB 1868, any out-of-state CPA or CPA firm may provide any and all "tax services" to any California consumer or business without a California license, without a California practice privilege, without a California firm registration, and without any notice to the Board. This is a significant expansion of what was intended to be a very narrow exception to the licensure, practice privilege, and firm registration requirements. It is not necessary to resolve any of the immediate problems posed by the profession's lack of preparation for the practice privilege program, and it is not appropriate to include such a substantial policy change in urgency legislation whose long-range impacts may not, of necessity, be fully and thoroughly analyzed.

2. The "tax services" concept is extraordinarily broad. The profession insists that the definition of the term "tax services" is well-understood by both the legal and accounting professions. Indeed, the term "tax services" has been broadly defined by the new Public Company Accounting Oversight Board (PCAOB) to mean "professional services rendered for tax compliance, tax advice,

² To reinforce this policy decision, the Board even drafted legislation authorizing it to adopt regulations limiting "the number of tax returns that may be prepared...." See Bus. & Prof. Code § 5054(b).

and tax planning.”³ It is difficult to conceive of anything related to accountancy that is not covered by this definition. The provision of tax services is clearly the practice of public accountancy under section 5051. Yet none of it — even though it might occur in California (however that is defined) and affect California consumers and businesses — would require a California CPA license, a California practice privilege, a California firm registration, or notice to the Board.

3. The definition of permissible “tax services” is still evolving. The type of tax services that may be offered by auditors is the subject of a pending rulemaking proceeding by the PCAOB and the Securities and Exchange Commission. In the Sarbanes-Oxley Act of 2002, Congress expressly prohibited audit firms from providing ten specific categories of non-audit services to their audit clients. Although many advocates argued that tax services should be included on this list because of their ability to impair auditor independence, Congress did not prohibit altogether the performance of tax services by auditors for their audit clients. Instead, the Sarbanes-Oxley Act requires a company’s audit committee to preapprove the provision of tax services by the company’s auditor. In 2003, the SEC recognized that while conventional tax compliance and planning activities may not be a threat to auditor independence, the marketing of novel, tax-driven financial products (including tax shelter transactions used improperly to avoid paying taxes) raises more challenging auditor independence issues. In December 2004, the PCAOB proposed regulations to define the types of tax services which *per se* compromise an auditor’s independence; its final regulations were transmitted to the SEC in November 2005. They have not yet been adopted by the SEC, nor have they even been published for comment in the *Federal Register*.⁴ This fact alone makes the proposed exemption of “tax services” from meaningful California regulation premature and especially inappropriate for inclusion in urgency legislation.

4. Contrary to the profession’s assertions, tax consulting does not appear to be especially well-regulated by other agencies. The profession also insists that “tax services” should be deregulated by CBA because they are highly regulated by other government agencies, including the Internal Revenue Service and the Franchise Tax Board. However, neither of those agencies is authorized to revoke, restrict, or suspend the license of a CPA. Those agencies may impose regulatory standards on those who practice before them, and they may be authorized to bar the incompetent and/or dishonest from practicing before them, but little actual enforcement occurs. In California, section 5063(a)(3) requires CPAs to report to CBA the cancellation, revocation, or suspension of their right to practice before any governmental body or agency. In fiscal year 2003–04, CBA received exactly two (2) of these reports; in FY 2004–05, CBA received a grand total of three (3) such reports. Thus, neither the IRS nor the FTB can protect the public from an incompetent or dishonest CPA providing “tax services” by revoking his/her license, and neither actively bar California CPAs from practicing before them. And if AB 1868 is enacted, CBA is rendered impotent because there is no California license, practice privilege, or firm registration to discipline — AB 1868 proposes to exempt all out-of-state CPAs and firms from these important requirements.

³ PCAOB Rule 1001(t)(i); effective pursuant to SEC Release No. 34-48180 (July 16, 2003).

⁴ They were filed by the SEC and transmitted to the *Federal Register* for publication on March 7, 2006. U.S. Securities and Exchange Commission, *Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, No. 34-53427 (PCAOB-2006-01), filed March 7, 2006.

In summary, CPIL opposes the expansion of section 5054 to all tax services because it significantly exceeds the "quick fix" changes that are necessary to correct the inadvertent problems created by the practice privilege program and in fact opens new holes in public protection — the Board's "paramount" priority under Business and Professions Code section 5000.1. CPAs who wish to provide "tax services" to California consumers and businesses have an easy remedy: **Get a practice privilege**. Notify CBA of your intent to practice public accountancy in California, assure CBA that you are qualified, pay \$100 per year, and submit to CBA's enforcement jurisdiction if you commit misconduct. That is why the practice privilege program was created, and there is no reason why it should not be used to police the provision of "tax services" — clearly the practice of public accountancy under section 5051.

Despite detailed and lengthy study, research, and planning, it appears this Board erred on several practice privilege issues. We urge you not to compound those errors by committing another one. Err on the side of caution and public protection. The profession's proposal is both unrelated to the problems posed by the practice privilege program and extremely significant. You should examine it with caution and care — not within the context of urgency legislation.

Thank you for your consideration of these comments.

Sincerely,



Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

cc: The Honorable Liz Figueroa
The Honorable Rudy Bermudez
Charlene Zettel, Director, Department of Consumer Affairs
David Link, Consultant, Senate Business and Professions Committee
Ross Warren, Consultant, Assembly Business and Professions Committee

III, A,

Subject: Re: Additional Agenda Item

From: "Julie D'Angelo Fellmeth" <julied@sandiego.edu>

Date: Tue, 14 Mar 2006 11:11:39 -0800

To: TheresaSiepert@cba.ca.gov, rdavila@marshall.usc.edu, tiino@deloitte.com, clifton.johnson@uboc.com, hillga@consumer.org, ddriftmier@vtdcpa.com, milesos@msn.com, ronblanc.lawyer@hotmail.com, richar5507@aol.com, stuart.waldman@asm.ca.gov, jaxmarkets@aol.com, rosiedane@hotmail.com, zunigaflowers@yahoo.com, david.swartz@gsbccpa.com, prekel@aol.com, rmiller@mngcpa.com, cpalobby@calcpa.org, bruce.allen@calcpa.org, jeannie.tindel@calcpa.org, ed@eebcpas.com, dcalegari@gosca.com, kristine.caratan@mossadams.com, mchakarun@nsacct.org, supercpa@pacbell.net, michael.duffey02@ey.com, bob@eebcpas.com, gene.erbstoesser@ey.com, tax@csea.org, kdbare@pacbell.net, amkcpacfe@sbcglobal.net, iralandis@hotmail.com, ke6vgv@aol.com, dmcnallycpa@earthlink.net, kreid@mcnallytemple.com, rrobinson@rrassoc.com, harold.s.schultz@us.pwc.com, sturg@sbcglobal.net, johnt@chevrontexaco.com, neal.west@mossadams.com, artbcpa@aol.com, gbong@bbrcpa.com, rbulosan@lautze.com, harish.khanna@us.pwc.com, vicki@americanfinancialtax.com, kplatz@schwartzplatz.com, dawn@gbacpa.com, csigmann@cba.ca.gov, mcrocker@cba.ca.gov, gnewington@cba.ca.gov, tsiepert@cba.ca.gov, pfranz@cba.ca.gov, awong@cba.ca.gov, mgale@cba.ca.gov, vosborn@cba.ca.gov, pbruning@cba.ca.gov, msantaga@cba.ca.gov, George_Ritter@dca.ca.gov, Michael.Granen@doj.ca.gov, Jeanne.Werner@doj.ca.gov, Kristin_Triepke@dca.ca.gov, katy.cpa@verizon.net, robin.hartley@sen.ca.gov, doreathea_johnson@dca.ca.gov, rhohnsbeen@aol.com, bluok@aol.com, david.link@sen.ca.gov, choy@rrassoc.com, rriley1295@aol.com, bill.gage@sen.ca.gov, antonette_sorrick@dca.ca.gov, khansen@kpmg.com, ross.warren@asm.ca.gov, eh4@sbcglobal.net

CC: sbango@aicpa.org

Good morning:

Attached please find a letter requesting reconsideration of the Board's decision to support the proposed expansion of the exception to the Board's licensure requirement, practice privilege requirement, and firm registration requirement in Business and Professions Code section 5054 to all "tax services."

If you have trouble opening this document, please email me with a fax number or call me at (619) 260-4806.

Thank you.

Julie D'Angelo Fellmeth

Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law
University of San Diego School of Law
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San Diego, CA 92110
(619) 260-4806
(619) 260-4753 (fax)
www.cpil.org

At 09:28 AM 3/14/2006, TheresaSiepert@cba.ca.gov wrote:

Attached is Agenda Item II.B - Draft Board Minutes of the February 23, 2006, Board meeting. Please add this item to the material previously received for the March 16-17, 2006, Board meeting. Thank you.

Theresa Siepert
Executive Analyst
(916) 561-1715
(See attached file: 2-06 Draft Minutes.doc)

CBA.taxservices.pdf

Content-Type: application/octet-stream
Content-Encoding: base64



University of San Diego

Center for Public Interest Law

Children's Advocacy Institute

Energy Policy Initiatives Center

March 14, 2006

Ron Blanc, President, and Members
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

re: Request for Reconsideration of "Tax Services" Issue

Dear President Blanc and Board Members:

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As you know, AB 1868 is urgency legislation sponsored by the accounting profession. It purports to provide a "quick fix" to unintended problems arising from the Legislature's enactment and CBA's implementation of the "practice privilege" program created in legislation that became effective on January 1, 2006. For the most part, AB 1868 does just that. However, this urgency legislation — which is supposed to be limited to fixing temporarily a narrow and circumscribed problem — is also inappropriately being used as a vehicle to enact a broader and arguably unrelated proposal that, if enacted, will, at best, cast into confusion California's ability to police CPAs and CPA firms engaged in wide-ranging tax consulting (which includes the controversial practice of marketing abusive tax shelters).

Specifically, the profession's proposed amendment to section 5054 will essentially deregulate — on the state level — the provision of "tax services" by CPAs and CPA firms to California consumers and businesses. The provision of "tax services" is very clearly the practice of public accountancy under section 5051. Yet the proposed amendment to section 5054 — which is not necessary to temporarily fix the problems allegedly posed by the practice privilege program — will allow any out-of-state CPA or CPA firm to provide any and all "tax services" to any California consumer or business without a California CPA license, without a California practice privilege, without a California CPA firm registration, and without any notice to the Board. This proposed amendment will punch a gaping loophole in CBA's ability to protect California citizens and businesses from incompetent, dishonest, or unscrupulous out-of-state CPAs and CPA firms that provide "tax services."

Background: The Practice Privilege Program

Prior to January 1, 2006, cross-border accounting practice was permitted under section 5050. That section allowed any out-of-state or foreign CPA to practice public accountancy in California without notice to the Board so long as that practice was “temporary” and “incidental to” accounting practice in the CPA’s home state or nation. Neither of those terms were ever defined in statute or regulation — thus allowing non-California CPAs to freely practice here without notifying the Board, upon their own self-determination that their practice was “temporary” and “incidental to” accounting work done in their home state. Obviously, that provision severely limited CBA’s ability to protect the public from incompetent and dishonest CPAs, and CPIL supported its closure through the “practice privilege” program created in SB 1543 (Figueroa) (Chapter 921, Statutes of 2004) and SB 229 (Figueroa) (Chapter 658, Statutes of 2005).

The practice privilege program seeks to facilitate cross-border practice by allowing eligible out-of-state CPAs to practice public accountancy in California without having to obtain full licensure by CBA. At the same time, it ensures that CBA is informed of the presence and practice of out-of-state CPAs in California, and — in the event of misconduct — it confers enforcement jurisdiction on the Board and enables it to immediately suspend the practice privilege of an out-of-state CPA to protect California consumers and businesses.

As you may know, the practice privilege concept was instigated by the accounting profession (and in fact has its roots in section 23 of the Uniform Accountancy Act). Further, the accounting profession was actively involved in the drafting of SB 1543 and SB 229 (and regulations to implement them) over an arduous two-year period of public CBA meetings and debate. In other words, both bills were crafted at the insistence of and with the assistance of the accounting profession. The profession — actively represented by multiple lawyers and lobbyists — had every opportunity to fully evaluate the impact of the new statutes, analyze in detail the interaction of the new statutes with existing law which was not being changed, question Board members and staff as to the application and interpretation of these new laws at public meetings, and to satisfy itself that this is what it wanted. During the entire two-year period in which it actively assisted in drafting both bills and urged their passage, the profession failed to foresee any of the problems that it says have occurred, and the profession now wants to temporarily undo — through AB 1868 — what has been done to enable fully informed correction and improvement of the practice privilege program by the Board and the Legislature.

Problems Inadvertently Caused by the Practice Privilege Program

The accounting profession asserts that, rather than facilitating cross-border practice, the new practice privilege program has caused significant disruption in its ability to serve its clients across state lines. Although the profession is unable to provide documentation or even an estimate of the concrete number of consumers, CPAs, and/or CPA firms actually affected by the new program, it contends that the following problems have occurred:

Problem #1. Some foreign CPAs must occasionally practice public accountancy in California. They used to do this under section 5050’s “temporary and incidental” exception to the licensure requirement, but that has now been repealed. And foreign CPAs do not qualify for a California practice privilege unless they are licensed by another state in the United States.

Problem #2. Some out-of-state CPAs file tax returns for California consumers and businesses. These tax returns were previously filed by those same out-of-state CPAs under section 5050's "temporary and incidental" exception to the licensure requirement — which has now been repealed. (The profession admits that at least some of this tax practice was neither "temporary" nor "incidental" to home-state practice. It was undertaken pursuant to a lengthy, ongoing professional relationship and was illegal under prior section 5050.) Thus, those out-of-state CPAs must now either (1) limit their tax practice to that allowed by section 5054 (see below), or (2) obtain a practice privilege — and they have known that since January 1, 2005.

Problem #3. Some of those out-of-state CPAs who need to file tax returns for California consumers and business may not qualify for a practice privilege. This assertion is made primarily by the four largest accounting firms; it is difficult to believe that they would hire CPAs who — in large numbers — fail to qualify for a practice privilege under any of the three methods described in the statute.

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"Quick Fix" Provisions Necessary to Temporarily Address These Problems

CBA has voted to support draft legislative changes that will address each of these problems:

- Problems #1, #2, and #3 described above are addressed through an amendment to section 5050 which temporarily restores "temporary and incidental" practice for out-of-state and foreign CPAs (subject to several conditions which were not part of the pre-2006 "temporary and incidental" law). To protect the public, AB 1868 would also add new sections 5050.1, 5050.2, and 5050.3; these sections confer jurisdiction on the Board to discipline any CPA or firm that practices public accountancy in California, and authorize the Board to adopt regulations to implement the "temporary and incidental" statutes.¹

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¹ CPIL reiterates its position that Problems #2 and #3 above could be addressed by simply changing the requirements for a practice privilege. Rather than requiring licensure by a "substantially equivalent" state in order to qualify for a practice privilege, CBA could require a valid CPA license from any other state in the United States. This would make all otherwise-eligible CPAs in the United States eligible to secure a practice privilege from CBA, and would obviate the need to temporarily restore the "temporary and incidental practice" exception to the licensure/practice privilege requirement for U.S.-licensed CPAs. Regrettably, the Board declined to support this proposal.

The Profession's Proposed Amendment to Section 5054

The provisions described above are arguably necessary to give the Board and the Legislature some breathing room in refining the practice privilege program. However, the profession's AB 1868 does not stop there.

AB 1868 would significantly expand section 5054, a very narrow exemption to the California licensure, practice privilege, and firm registration requirements for a very narrow slice of the practice of public accountancy: the preparation of "tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death." CBA drafted section 5054 in 2005; it was added to the Accountancy Act by SB 229 (Figueroa) in 2005 in response to numerous complaints from out-of-state CPAs who had prepared tax returns for years for a client who then relocated to California. Both the CPA and the client wish to continue the relationship, but the CPA does not want to go to the expense of securing a California license or practice privilege just to prepare one tax return. CBA drafted section 5054 in direct and deliberately narrow response to this particular complaint; during 2005, the Board declined to widen the exception to cover "all tax returns" because it believed that CPAs who perform more public accountancy in California than the occasional tax return should simply get a practice privilege — that is precisely why the practice privilege program was created.²

The profession now seeks expansion of the exemption in section 5054 to cover not just "all tax returns" or "all tax return preparation services" but all "**tax services**." CPIL opposes this amendment to section 5054 for four reasons:

1. This is a significant policy issue which is inappropriate for consideration in urgency legislation designed to address a very different issue. Essentially, this proposed loophole would expose California consumers and businesses to the unlicensed practice of tax consulting, and would severely limit the Board's ability to protect the public because the CPA providing the "tax services" has no license or practice privilege which CBA could discipline, the CPA firm may not be registered in California, and the Board doesn't even know that the tax consulting activity is occurring. Under AB 1868, any out-of-state CPA or CPA firm may provide any and all "tax services" to any California consumer or business without a California license, without a California practice privilege, without a California firm registration, and without any notice to the Board. This is a significant expansion of what was intended to be a very narrow exception to the licensure, practice privilege, and firm registration requirements. It is not necessary to resolve any of the immediate problems posed by the profession's lack of preparation for the practice privilege program, and it is not appropriate to include such a substantial policy change in urgency legislation whose long-range impacts may not, of necessity, be fully and thoroughly analyzed.

2. The "tax services" concept is extraordinarily broad. The profession insists that the definition of the term "tax services" is well-understood by both the legal and accounting professions. Indeed, the term "tax services" has been broadly defined by the new Public Company Accounting Oversight Board (PCAOB) to mean "professional services rendered for tax compliance, tax advice,

² To reinforce this policy decision, the Board even drafted legislation authorizing it to adopt regulations limiting "the number of tax returns that may be prepared...." See Bus. & Prof. Code § 5054(b).

and tax planning.”³ It is difficult to conceive of anything related to accountancy that is not covered by this definition. The provision of tax services is clearly the practice of public accountancy under section 5051. Yet none of it — even though it might occur in California (however that is defined) and affect California consumers and businesses — would require a California CPA license, a California practice privilege, a California firm registration, or notice to the Board.

3. The definition of permissible “tax services” is still evolving. The type of tax services that may be offered by auditors is the subject of a pending rulemaking proceeding by the PCAOB and the Securities and Exchange Commission. In the Sarbanes-Oxley Act of 2002, Congress expressly prohibited audit firms from providing ten specific categories of non-audit services to their audit clients. Although many advocates argued that tax services should be included on this list because of their ability to impair auditor independence, Congress did not prohibit altogether the performance of tax services by auditors for their audit clients. Instead, the Sarbanes-Oxley Act requires a company’s audit committee to preapprove the provision of tax services by the company’s auditor. In 2003, the SEC recognized that while conventional tax compliance and planning activities may not be a threat to auditor independence, the marketing of novel, tax-driven financial products (including tax shelter transactions used improperly to avoid paying taxes) raises more challenging auditor independence issues. In December 2004, the PCAOB proposed regulations to define the types of tax services which *per se* compromise an auditor’s independence; its final regulations were transmitted to the SEC in November 2005. They have not yet been adopted by the SEC, nor have they even been published for comment in the *Federal Register*.⁴ This fact alone makes the proposed exemption of “tax services” from meaningful California regulation premature and especially inappropriate for inclusion in urgency legislation.

4. Contrary to the profession’s assertions, tax consulting does not appear to be especially well-regulated by other agencies. The profession also insists that “tax services” should be deregulated by CBA because they are highly regulated by other government agencies, including the Internal Revenue Service and the Franchise Tax Board. However, neither of those agencies is authorized to revoke, restrict, or suspend the license of a CPA. Those agencies may impose regulatory standards on those who practice before them, and they may be authorized to bar the incompetent and/or dishonest from practicing before them, but little actual enforcement occurs. In California, section 5063(a)(3) requires CPAs to report to CBA the cancellation, revocation, or suspension of their right to practice before any governmental body or agency. In fiscal year 2003–04, CBA received exactly two (2) of these reports; in FY 2004–05, CBA received a grand total of three (3) such reports. Thus, neither the IRS nor the FTB can protect the public from an incompetent or dishonest CPA providing “tax services” by revoking his/her license, and neither actively bar California CPAs from practicing before them. And if AB 1868 is enacted, CBA is rendered impotent because there is no California license, practice privilege, or firm registration to discipline — AB 1868 proposes to exempt all out-of-state CPAs and firms from these important requirements.

³ PCAOB Rule 1001(t)(i); effective pursuant to SEC Release No. 34-48180 (July 16, 2003).

⁴ They were filed by the SEC and transmitted to the *Federal Register* for publication on March 7, 2006. U.S. Securities and Exchange Commission, *Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, No. 34-53427 (PCAOB-2006-01), filed March 7, 2006.

In summary, CPIL opposes the expansion of section 5054 to all tax services because it significantly exceeds the “quick fix” changes that are necessary to correct the inadvertent problems created by the practice privilege program and in fact opens new holes in public protection — the Board’s “paramount” priority under Business and Professions Code section 5000.1. CPAs who wish to provide “tax services” to California consumers and businesses have an easy remedy: **Get a practice privilege**. Notify CBA of your intent to practice public accountancy in California, assure CBA that you are qualified, pay \$100 per year, and submit to CBA’s enforcement jurisdiction if you commit misconduct. That is why the practice privilege program was created, and there is no reason why it should not be used to police the provision of “tax services” — clearly the practice of public accountancy under section 5051.

Despite detailed and lengthy study, research, and planning, it appears this Board erred on several practice privilege issues. We urge you not to compound those errors by committing another one. Err on the side of caution and public protection. The profession’s proposal is both unrelated to the problems posed by the practice privilege program and extremely significant. You should examine it with caution and care — not within the context of urgency legislation.

Thank you for your consideration of these comments.

Sincerely,



Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

cc: The Honorable Liz Figueroa
The Honorable Rudy Bermudez
Charlene Zettel, Director, Department of Consumer Affairs
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